

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Revision of the Commission's Rules
To Ensure Compatibility with
Enhanced 911 Emergency Calling Systems

CC Docket 94-102

Y-12 Wireless, LP
Petition for Waiver of Section 20.18(c) of the
Commission's Rules and the Deadlines Established
In the Fourth Report and Order

FCC 00-436

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND EXTENSION OF
DIGITAL WIRELESS 911 TTY REQUIREMENTS**

Y-12 Wireless, LP ("Y-12") dba Amica Wireless Phone Service by its attorneys, and pursuant to Section 1.3 of the Commission's rules, hereby requests a limited Waiver and six (6) month extension of the June 30, 2002 deadline by which digital wireless service providers must be capable of transmitting 911 calls using TTY devices (hereinafter "911-TTY Waiver and Extension Request"). For the reasons set forth below, Y-12 submits that grant of the requested waiver and extension would serve the public interest.

BACKGROUND & FACTS

1. The FCC has adopted rules to implement Section 2(b) of the Wireless Communications and Public Safety Act of 1999, fulfilling the Congressional directive that wireless communications operators deploy a nationwide, seamless communications infrastructure for emergency services.¹ On December 1, 1997, the Commission adopted a

¹ Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, §2(b).

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Memorandum Opinion and Order, CC Docket No. 94-102, FCC 97-402, released December 13, 1997 ("MO&O") which, at para. 59, suspended until October 1, 1998 enforcement of the requirement that licensees providing service on *digital* wireless systems be able to transmit 911 calls made by individuals with speech or hearing disabilities. Suspension of enforcement of the subject Section 20.18(c) of the Commission's Rules was further extended until November 15, 1998,² and again until January 1, 1999.³ Finally the Commission established the current deployment deadline of June 20, 2002.⁴

2. Y-12 is a PCS Broadband serving the certain rural areas in Illinois as set forth in Exhibit 1. It currently has approximately 10,000 subscribers.

DISCUSSION

3. Y-12 appreciates generally the public safety importance of ensuring 911 access by persons with hearing and speech disabilities using TTY devices. Yet several reasons warrant a waiver and extension of the June 30, 2002 deadline, for a small rural carrier, Y-12, that has a limited number of subscribers; none of which have yet to request the need for TTY equipment.

4. Waivers are appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁵ Section 1.925(b)(3) of the Commission's rules explains that a waiver of the Commission's rules applicable to public mobile services is appropriate whenever a party demonstrates either (1) that the underlying purpose of

² Order in CC Docket No. 94-102, DA 98-1982 (Wireless Telecommunications Bureau), released September 30, 1998.

³ Order in CC Docket No. 94-102, DA 98-2323 (Wireless Telecommunications Bureau), released November 13, 1998.

⁴ Fourth Report and Order, CC Docket No. 94-102, FCC 00-436, released December 14, 2000.

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

the rule would not be served or would be frustrated by its application to the instant case, and that grant of a waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances to the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶

6. Y-12 is unable to comply with the June 30, 2002 because, at this time, its equipment vendor has not yet installed the necessary software and hardware that will enable Y-12 to be TTY compliant. Y-12, which recently acquired the PCS system from BRK Wireless, Inc. ("BRK"), currently utilizes a Lucent Switch (5ESS2000) with software version 5E13.⁷ BRK commenced its negotiations with Lucent in April, 2001 to upgrade its switch software and hardware to enable them to be TTY compliant. However, the subsequent negotiation and consummation of the sale of its PCS system to Y-12 as well as the turnover at Lucent stalled the negotiation with Lucent. As a result, Y-12 just recently executed a purchase order for the necessary switch software upgrades to become TTY compliant, but the upgrades will not commence until Lucent provides a time line and a price quote on the additional switch hardware that is necessary as Y-12 progresses to each upgrade. At this time, Lucent has not provided Y-12 with any timeframe for the upgrades. Nonetheless, it has an understanding with Lucent that it should be TTY compliant by the end of 2002.

7. Y-12's request satisfies the Commission's waiver standard. In this instance, unique and unusual circumstances unquestionably exist. Specifically, it is a small, rural carrier providing service to a limited number of subscribers. It presently has not received a request from any subscribers for TTY equipment. Further, it has a clear and concise plan for TTY

⁶ 47 C.F.R. § 1.925(b)(3).

⁷ BRK and Y-12 entered into a purchase agreement for the acquisition of BRK's PCS system in May, 2001, and the transaction was not consummated until December 31, 2002.

compliance. Finally, the Commission has consistently concluded that waiver of a regulatory deadline is appropriate when noncompliance "is due to circumstances beyond the licensee's control." ⁸

CONCLUSION

7. For all the foregoing reasons, Y-12 urges the Commission to grant the 911-TTY Waiver and Extension Request.

Respectfully submitted,

Y-12 Wireless, LP



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June 28, 2002

⁸ E.G., Order, *McElroy Electronics Corp.; Request for Clarification of the commission's Rules Regarding Section 22.91(a) in Relation to Construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

Exhibit 1

Call Sign	Block	MHz	Market #	Market Name
WPOJ704	C	10	BTA344	Peoria, IL
WPOJ703	C	15	BTA103	Danville, IL
KNLF793	C	30	BTA161	Galesburg, IL
KNLG648	F	10	BTA213	Jacksonville, IL
KNLG650	F	10	BTA243	La Salle-Peru-Ottawa-Streator, IL
KNLG649	F	10	BTA286	Mattoon, IL
KNLF892	F	10	BTA046	Bloomington, IL
KNLG646	F	10	BTA071	Champaign-Urbana, IL
KNLG647	F	10	BTA109	Decatur-Effingham, IL
KNLG651	F	10	BTA426	Springfield, IL

DECLARATION

I, Mark J. Kington, hereby state and declare:

1. I am the President of Y-12 PCS, Inc., which is the general partner of Y-12 Wireless, L.P.

2. I am familiar with the facts contained in the foregoing "Petition For Waiver And Extension of Digital Wireless 911 TTY Requirements" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of June, 2002.



Mark J. Kington

CERTIFICATE OF SERVICE

I, Loren B. Costantino, a legal assistant in the law offices of Lukas, Nace Gutierrez & Sachs, Chartered, do hereby certify that I have on this 28th day of June, 2002, sent by Hand-Delivery, copies of the foregoing Petition For Waiver And Extension Of Digital Wireless 911 TTY Requirements to the following:

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